

Response, Relief, and Recovery: Katrina and Beyond

Recommendations for Legislative Action

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Relieve FEMA of its recovery mission and reassign those responsibilities to the appropriate federal agencies.

The Katrina recovery is too large a task for FEMA and its sluggish bureaucratic procedures. FEMA considers and awards assistance on a building-by-building basis, resulting in a painstakingly slow recovery process that discourages comprehensive planning. FEMA's institutional reliance on ill-conceived flow charts and faulty policy guidance memoranda has stymied communities in their efforts to move quickly toward recovery. In addition, FEMA has ignored large segments of the Gulf Coast's diverse population by failing to ensure that all individuals have access to culturally- and linguistically-appropriate disaster preparedness and relief services.

FEMA's strict adherence to a 'one-size-fits-all' recovery template is further complicated by FEMA's lack of expertise in arenas already administered by a wide-array of federal agencies. Congress should refocus FEMA's mission as it relates to preparation and immediate response, and reassign recovery responsibilities to relevant federal agencies. Agencies should be given the responsibility of restoring services and facilities, and have the flexibility to adapt federal assistance to meet local needs.

Specifically, agencies should employ personnel and methods that recognize the cultural and linguistic diversity of the regions in need of assistance. All official documents and support materials should be made available in languages appropriate for all populations in the region.

Across the board, Congress should require federal agencies to conduct the environmental cleanup of affected areas in an effective and timely manner without risking enduring preventable environmental or health consequences. Agency efforts should balance the expeditious return of victims to their homes and the restoration of the region's economic sustainability with patent attention to the long-term health and safety of all communities.

Housing. Congress should grant HUD the authority to approve and oversee local government plans.

Congress has already reallocated funds from FEMA to HUD to provide housing assistance through the Community Development Block Grant program; however, the Community Development Block Grants cannot cover the entire financial burden of restoring affordable housing to the Gulf Coast. HUD's familiarity with housing programs would allow the agency to recommend and implement plans that would mix existing housing finance programs, Gulf Opportunity Zone incentives, and FEMA public assistance and mitigation funds to restore affordable housing as quickly as possible.

Education. *Congress should assign the Department of Education the mission of approving local plans to restore schools and services as soon as possible.*

Many schools have been able to reopen in temporary classrooms, but school districts are not receiving sufficient financial assistance to rebuild or repair their facilities. School districts with now-depleted tax bases can't afford to make up the shortfall. Many children on the Gulf Coast are looking at a future of learning in the cramped quarters of a trailer dressed up to look like a classroom.

In many cases, FEMA public assistance does not allow school districts the flexibility to formulate a comprehensive plan for serving the needs of their communities. FEMA insists on allocating assistance funds school by school, when some schools should be moved from flood plains or consolidated with other schools to account for the changing population distribution in many Gulf Coast communities. The Department is familiar with the intricacies of district-wide school planning and should be tasked to assess the needs of each school district and the limits on each district's ability to finance those needs.

Public Infrastructure. *Congress should task the Department of Transportation, the Corps of Engineers, HUD, and other relevant federal agencies to form working groups to coordinate and approve local infrastructure plans.*

Congress reallocated limited funds from FEMA to the Department of Transportation for the purposes of bridge and highway reconstruction, but local governments are forced to negotiate project by project with FEMA. The FEMA public assistance regulations discourage a comprehensive infrastructure strategy. This process delays the recovery and favors the path of least resistance: repairing aging infrastructure rather than investing in improvements. Water and sewer repairs, transportation projects, and housing and redevelopment plans should be coordinated and planned to meet local needs, as identified by local officials.

Healthcare. *Congress should designate HHS to coordinate with other federal agencies, state authorities, and local officials to plan and implement a comprehensive health service infrastructure.*

FEMA has failed to assist state and local officials in their efforts to develop, restore, and fund the public health infrastructure. FEMA continues to award public funds on a building-by-building basis, with no attempt to formulate a cohesive and comprehensive plan to serve the urban populace of New Orleans, which historically has suffered from a high percentage of chronic disease and inadequate financial resources. There is no long-term planning to augment state and local actions to recruit and retain healthcare professionals, pay for uncompensated care, close gaps in funding for capital needs, provide inpatient psychiatric and substance abuse services, shore-up emergency preparedness and communication technology, and build "hardened" healthcare facilities.

Currently, New Orleans' public health service infrastructure lacks the two most critical elements of healthcare: doctors and hospitals. FEMA does not have the expertise or authority available to identify alternate funding sources to incentivize physicians to return to the area. In contrast, HHS has both the policy expertise and authority to allow Katrina-affected states to use Medicaid Disproportionate Share Hospital (DSH) payments to reimburse hospitals for physician services to patients that cannot pay for health services.

The construction and repair of New Orleans' hospitals has been paralyzed by FEMA's building-by-building evaluation process and the shortsighted terms set forth by the Stafford Act. The Stafford Act specifies that FEMA pay for a new building only if restoring the building to pre-hurricane conditions would cost more than 50 percent of a complete rebuild. Below that 50 percent, FEMA is authorized only to pay costs to restore the building to its pre-hurricane state.

In the case of Charity Hospital in New Orleans, FEMA has deemed that it does not meet the 50 percent threshold and has offered funds only to restore the facility to its previous condition. In reality, returning the building to its pre-Katrina status would cost millions of dollars and the result would be an old facility, ill-suited to meet the needs of its community. According to independent consultants at Louisiana State University, bringing Charity Hospital up to modern standards for healthcare would require far more funding that FEMA can provide under the restrictions of the Stafford Act.

Congress should pursue legislative action to allow for replacement of essential public healthcare facilities at modern-day standards. HHS is the most qualified agency to identify funding sources and work with local officials to identify community healthcare priorities.

Economic Development. *Congress should task the Small Business Administration with the objective of restoring businesses that provide for the livelihood of affected communities.*

The SBA should allow sufficient flexibility to enable the recovery of small businesses to restore the local economy and private infrastructure. Small businesses provide for the employment, goods, and services necessary for communities to return to self-sufficiency. Industries such as fishing and shrimping were devastated by the storms. Storms destroyed shops, warehouses, and boats. Loan and grant programs should be administered with the flexibility necessary to account for the unique situations created by the flooding and storms. Direct assistance should be made available to those small business owners who are still unable to purchase insurance or have difficulty demonstrating their ability to repay loans.

Investigate the Katrina claims practices of insurance companies that contract with the National Flood Insurance Program. The National Flood Insurance Program (NFIP) allows insurance companies to sell flood policies and adjust flood claims that are financially backed by federal taxpayer dollars. Insurance company adjusters have an obvious conflict of interest when deciding whether claims should be billed to the federal flood insurance program or to the insurance companies that employ them, train them, and advise them on the interpretation of their policies.

State Farm, Nationwide, Allstate, and other insurers paid hundreds of thousands of wind claims inland, where they could not possibly blame the storm surge, but denied wind claims near the coastline, where winds were stronger and water also was present.

Cori and Kerri Rigsby, who adjusted claims under a contract with State Farm, have revealed that they were instructed to pay NFIP claims as quickly as possible, while refusing to acknowledge any evidence of wind damage. The sisters also claim that State Farm and its contractors revised engineering reports and coerced engineering firms to assign all damages to flooding, despite hours of hurricane winds before the storm surge.

In June, the House passed the Taylor Amendment to instruct the Inspector General of the Department of Homeland Security to investigate whether insurance companies defrauded the taxpayers by billing the flood insurance program for claims that should have been paid by the insurers' wind policies. The final Homeland Security Appropriations Act for Fiscal Year 2007 includes similar language, instructing the Inspector General to investigate Katrina claims and report its findings to Congress by April 1, 2007.

The Katrina Task Force requests that Congress conduct hearings after receipt of the Inspector General's report. We also recommend that Congress restructure NFIP to ensure that an independent adjuster is assigned to assess damages at any property where both wind and water are possible causes.

Repeal the federal antitrust exemption as it relates to price-fixing, bid-rigging, or market allocation in the market for property insurance. The Katrina Task Force seeks to prohibit commercial insurers in the market for property insurance from any form of price-fixing, bid-rigging, or market allocation. It seeks to prohibit insurers in the market for property insurance from engaging in concerted activity to deny compensation to policyholders through restrictive and unwarranted interpretations of policies. It also seeks to prohibit concerted activity by insurers in the market for property insurance to limit the scope of policies and compensation.

Establish stronger federal oversight of property insurance practices. Congress should establish federal authority to conduct oversight of property insurance practices. When insurance companies stop issuing policies in New York because of claims in Mississippi and Louisiana, the industry cannot reasonably claim that property insurance is not interstate commerce. The government has assumed responsibility for insuring risks that the insurance industry refuses to cover, such as flooding. The federal government also provides disaster assistance to offset the uncovered losses of individuals, businesses, and communities. Since federal taxpayers are forced to fill the gaps left by property insurance, Congress and the federal government have an obligation to perform diligent oversight of the industry.

Establish all-perils disaster insurance coverage backed by the federal government. The segmented insurance market leaves gaps in coverage that result in widespread uninsured losses from natural catastrophes, especially from flooding, earthquakes, and other perils commonly excluded by private property insurance. Private insurers can shift responsibility for hurricane losses to property owners, NFIP, and relief programs by attributing damages to water rather than wind. Any effort to provide a federal backstop for insurance losses should insist on elimination of the exclusions and gaps in coverage.

Rather than providing relief aid after the fact, the federal government should establish a reinsurance program that assesses the cost of catastrophic risks and collects premiums before such events occur. The program would provide reinsurance to the all-perils insurance coverage and would be triggered by large-scale natural catastrophes.

The federal program should encourage state efforts to provide catastrophe insurance programs by providing reinsurance for state insurance funds. When states are stakeholders in insurance risk, they have incentives to implement and enforce zoning codes, building standards, and mitigation efforts to minimize disaster losses.

Rebuild levees and flood controls to higher standards.

The 2005 hurricane season highlighted the need to address the absence of a comprehensive hurricane protection and coastal restoration plan on the Gulf Coast, particularly in South Louisiana where low-lying coastal wetlands and continued land subsidence threaten almost 400 miles of America's energy coast.

In response to the 2005 hurricanes, Congress appropriated \$3.3 billion directly to the U.S. Army Corps of Engineers (USACE) through supplemental appropriations and reallocation. Of the \$3.3 billion, \$0.98 billion was allotted to repair existing hurricane protection, flood control, and navigation infrastructure. An appropriation of \$1.59 billion was designated to restore the existing hurricane protection infrastructure to its authorized design level of protection, which specifies withstanding the equivalent of a fast-moving Category 3 hurricane.

The USACE was also directed to use \$0.54 billion for constructing authorized hurricane protection projects in Louisiana that had not yet been completed when the 2005 hurricanes struck. Congress further appropriated \$70 million for investing in natural disaster preparedness and mitigation activities, and an additional \$55 million was slated for various Corps studies, including investigations into the restoration of Louisiana's coastal wetlands, increasing the level of hurricane protection for coastal Louisiana, and addressing Mississippi's water resource needs. These studies may conclude with recommendations for additional investment of federal resources in the affected Gulf States.

While the USACE has been tasked with and completed a tremendous scope of work, serious barriers still exist in the path toward comprehensive hurricane protection and coastal restoration.

Category 5 Levees. *Congress should mandate the construction of a Category 5 levee system and corresponding flood control structures to ensure protection for all residents of metropolitan New Orleans.*

To move forward with the construction and rehabilitation of the hurricane protection systems in Louisiana and Mississippi, it is in the best interest of the Nation's taxpayers to ensure that all construction meets the realistic threats of future storms. Wetlands subsidence, land erosion, and global climate change have all contributed to the Gulf Coast's increased vulnerability to powerful hurricanes. The mission of USACE on the Gulf Coast has already accounted for a significant investment of taxpayer dollars; it would be negligent not to build meaningful protection. The incremental cost involved in constructing Category 5 levees is small compared to the lives and property spared by real hurricane protection.

Congressional Intent. *Congress should create a Congressional "Strike Force" with authority to clarify Congressional intent and provide authorization for consensus needs in hurricane protection and coastal restoration.*

Misinterpretation of Congressional intent often delays or significantly alters the scope of projects. In the case of the Louisiana Coastal Protection & Restoration Preliminary Technical Report (LACPR-PTR), the USACE was tasked with completing a preliminary report with specific recommendations for expedited authorizations on projects needed to protect against storms. However, five months into a six-month study, USACE headquarters completely changed the scope of the study, offering instead an ambiguous decision-making matrix from which Congress would choose projects for future authorization.

Normal USACE processes for planning and construction were designed to move forward with close scrutiny and checks in place to avoid design flaw and degradation of the environment.

However, current principles and guidelines followed by USACE do not provide the agency with enough flexibility to react quickly to emergency needs without express statutory authority. In the case of non-federal levee repairs at Braithwaite and Scarsdale in Plaquemines Parish, USACE has determined that all planning, economic justification and National Environmental Policy Act (NEPA) procedures take place before construction, consistent with current policy. However, federal levees specifically mentioned in supplemental appropriation language under Project Guardian were able to move ahead with construction on an emergency basis. This inconsistency arose out of a technical opinion from USACE counsel, based on the fact that the federal levees were specified in statute, but the non-federal levees were not.

Examples like these could be avoided with the creation of a Congressional “Strike Force” with the power to handle fast-tracked authorizations, studies, or appropriations. Additional authority for this delegation may include handling clarification of Congressional intent, which would effectively end the common USACE practice of using counsel opinions to side-step Congress and pursue alternate agenda.

Flexibility in Funding. *Congress should direct agencies to allow for flexibility in use of federal grants as local cost-share as it relates to hurricane protection and coastal restoration projects.*

The Gulf Coast must also cope with the reality of high costs associated with completing large-scale hurricane protection and coastal restoration projects. The tremendous amount of design, engineering, and construction work these monumental projects require is certainly within the ability of the professionals that have been working on this issue. However, the decimated state of Gulf Coast economies handicaps their ability to meet the fiscal obligations necessary to complete these projects in a timely manner. Additionally, it has been documented and acknowledged by Congress and this President that activities related to oil and gas exploration and production are directly linked to the destruction of critical marshes. America’s wetlands have paid the price for supplying this nation with the energy that moves commerce and people.

Appropriations. *Congress should take measures to ensure a dedicated and reliable funding source to better enable construction schedules and deadlines.*

Congress must create new, creative mechanisms to direct the funds necessary for construction of a comprehensive hurricane protection and coastal restoration plan for the Gulf Coast. A reliable, dedicated funding stream combined with flexible guidelines on the use of federal grants can accomplish this task. The normal appropriations process is simply inadequate to meet funding needs for this endeavor. The Gulf Coast bears a disproportionate burden of the environmental impact related to supporting the energy industry.

Accountability. *Congress should implement an oversight program to hold parties accountable for the progress and completion of coastal restoration and hurricane protection projects.*

The combined effort to achieve comprehensive coastal restoration and hurricane protection involves several parties. Each participant bears responsibilities that determine whether a project will move forward on schedule and reach eventual completion. Failure to meet benchmarks and adhere to timelines has the possibility of resulting in loss of property and, more importantly, lives.

The *Federal Engineering Accountability Act*, introduced by Congressman Jefferson, provides a mechanism to determine to what extent the USACE should be held accountable for its own admitted failures and the extraordinary, uncompensated loss of life and property in a tragic event such as the aftermath of Hurricanes Katrina and Rita. Moving forward with this or similar legislation would allow for better enforcement of accountability over an agency that is responsible for protecting immeasurably valuable lives and property.

Congress, another key participant in the process, bears responsibility in the adequate and timely construction of hurricane protection and coastal restoration projects as well. Measures should be taken to document budgeting and appropriations benchmarks for all USACE projects. Should Congress see fit to appropriate funds that fall short of USACE capabilities for the fiscal year, the USACE would not be held solely accountable for delays in planning, engineering and construction.

However, in the event that adequate authorization and appropriations exist, the USACE should be held accountable for competent and timely progress on projects. Congress should consider adopting performance metrics to evaluate USACE progress. In the event the USACE fails to meet these expectations, Congress should reserve the right to transfer project management to another entity while allowing the USACE to keep an oversight role. In the interest of maintaining schedules, a list of pre-approved contractors or alternate project managers should be kept. This oversight role would effectively allow the federal government ability to ensure all work performed by new project managers will meet federal requirements for completion.

Re-equip National Guard units to fulfill civil support mission. In accordance with the DOD Strategy for Homeland Defense and Civil Support, the National Guard is called upon to provide a significant amount of support to civil authorities in times of crisis or when manmade or natural disasters occur. The National Guard played a tremendous role in the response to Hurricane Katrina.

Given the current operational demands of Iraq and Afghanistan, questions have arisen about how the National Guard is resourced to handle its civil support mission. Since the establishment of DOD's *Total Force Policy* in 1973, the reserve components have been thought of, in terms of its federal mission, as an augmentation force for the active-duty during wartime. Since September 11, 2001, the National Guard has been called up for extended periods of active duty in support of homeland defense and overseas operations. Over the period of 2004-2005, the National Guard composed nearly half of the U.S. forces in Iraq. Forty-percent of the Mississippi National Guard and one-third of the Louisiana National Guard were deployed to Iraq when Katrina struck the Gulf Coast.

While strides were made to equip the National Guard for increasingly long deployments alongside the active forces in Iraq, Katrina exposed shortages that still exist. For instance, the National Guard lacked communications equipment with which it could effectively communicate with the active forces deployed in Katrina relief operations. In addition, the National Guard lacked trucks, helicopters, and other logistics platforms with which to distribute food, water, ice, and other critical relief supplies to storm victims. Many National Guard units that had rotated through Iraq were ordered to leave their equipment behind. Without a full complement of equipment, these returning units are woefully unprepared for their state and civil support duties.

The National Guard is being asked to do more than ever before, and its missions at home are likely to expand further in the future. Historically, DOD has not prioritized the resourcing of the National Guard and reserve component forces, relying on Congress to make up for equipment shortfalls through earmarks.

Reform FEMA contract procedures to eliminate cost-plus noncompetitive contracts. House Democrats identified 19 Katrina contracts collectively worth \$8.75 billion that have been plagued by waste, fraud, abuse, or mismanagement. Mistakes were made in virtually every step of the contracting process: from

pre-contract planning through contract awarding and oversight. This situation was exacerbated by a shortage of trained contract officials to oversee contract spending on the Gulf Coast.

Full and open competition was the exception, not the rule. As of June 30, 2006, over \$10.6 billion had been awarded to private contractors for Gulf Coast recovery and reconstruction. Ninety-five percent of these funds (\$10.1 billion) were awarded in only 1237 contracts, each valued at \$500,000 or more. Only 30% of these contracts were awarded with full and open competition.

While many FEMA contracts resulted in waste, fraud, and abuse, none were more poorly designed or administered than the trailer contracts. FEMA awarded cost-plus, noncompetitive contracts to Shaw Group, Bechtel Corp., CH2M Hill, and Fluor Corp. to provide temporary housing. These four Technical Assistance Contracts were originally approved for up to \$100 million each but have grown to a total of \$3.4 billion. Despite the high cost, the delivery of trailers was much too slow and horribly inefficient. Each travel trailer took several weeks to deliver and install because a different subcontractor performed each step.

Travel trailers are devised for easy installation. They are designed primarily for families to haul on a weekend trip, plug in, and connect water and sewer lines in just a few minutes. A travel trailer installation should have taken only two crews: one to prepare the site and another to deliver and install the trailer.

The manufacturers delivered trailers to a federal staging area in Arkansas, where they sat. Next, a subcontractor hauled a trailer to the FEMA Logistic Staging Area in Purvis, MS, where it sat again. A few days or weeks later, a second subcontractor hauled the trailer to an interim staging area in the county of destination. In the meantime, a third subcontractor sent a crew to inspect the home site to certify that debris had been cleared and utilities were functional.

At that point, Bechtel or its subcontractor would contact the electric utility to install a power pole at the trailer site. Bechtel and FEMA blamed the power companies for subsequent delays, but Bechtel should have ordered mass production of power poles, and should have coordinated its electrical subcontractors with the utilities' line crews.

Once all utilities were available, a fourth subcontractor would deliver the trailer to the site and leave it locked. Eventually, a fifth subcontractor would hook up the water and sewer. Days or weeks later, a sixth subcontractor would construct a ramp or install steps. After another delay, a seventh subcontractor would inspect the trailer to declare it ready for occupancy. After the resident was in the trailer for a week or so, an eighth subcontractor would conduct a walk through inspection to check for maintenance problems.

In Mississippi, the cost-plus reimbursement for the contract gave no incentive for Bechtel to streamline the process, to train crews to perform multiple tasks, or to take other obvious steps to improve efficiency. Bechtel did not deliver trailers any faster or cheaper in the sixth month than they had delivered them in the second month.

Congress should enact H.R. 6069, the *Clean Contracting Act*, or similar legislation that would strictly limit noncompetitive contracts, ensure bidding on task orders, and put time limits on costly no-bid contracts signed during emergencies. Legislation should also include language to ban monopoly contracts, minimize the use of cost-plus contracts, and insist that subcontractors be held to the same rules, regulations, and standards that govern prime contractors. By restricting excessive subcontracting and requiring emergency contracts to be quickly re-bid, FEMA will be encouraged to expand opportunities for local and small businesses to receive contracts to rebuild their own communities.

Moreover, Congress should require FEMA to exercise rigorous oversight of contractors and demand that contractors perform their missions as quickly and efficiently as possible. FEMA and contractors must have the flexibility to adapt procedures in order to improve performance.

Improve the Federal Logistics System. Hurricane Katrina showed that the federal logistics system that provides critical relief items to victims of catastrophes does not operate efficiently or effectively. Under the current logistics system, the Corps of Engineers, General Services Administration, and FEMA all have certain responsibilities in the procurement and delivery of commodities and equipment.

In testimony provided to the House Select Katrina Committee, Mississippi Emergency Management Agency Director Robert R. Latham, Jr., stated, “The federal logistics and supply system failed during Hurricane Katrina. ... At no time during Hurricane Katrina did the State have a clear understanding of this system and what was the status of our requests.”

The Katrina Task Force concurs with Director Latham’s recommendation that there must be “a system that links the entire logistics system from the local and state government’s ability to request, to the federal government’s ability to fill the request, and all levels of government’s ability to track this request.” Congress should immediately enact legislation mandating that the Department of Homeland Security establish a unified logistics system that includes all federal, state, local, and volunteer agencies to ensure a coordinated effort in requests, tracking, and delivery of commodities and equipment.

Establish Waterborne Fuel Delivery Capability. Hurricane Katrina also exposed another major shortcoming of the federal logistics and supply system: the lack of a waterborne capability for the delivery of bulk supplies. In the immediate aftermath of Katrina, several bridges and roadways were washed away, and the majority of those that remained were rendered impassable by millions of cubic yards of debris scattered by the storm. It took several days to clear debris in order to open roads. All the while, federal, state, and local responders scrambled to assess storm damage, get relief supplies to people, and conduct search and rescue on roads that were often reduced to one lane, if passable at all.

Like food, water, and ice, fuel is among the most important commodities needed in the aftermath of a disaster. According to the Department of Energy, Katrina disrupted electrical service for 2.7 million people in Louisiana, Mississippi, Alabama, and Florida. When electrical power is disrupted, fuel pumps at gas stations do not work. Generators that provide power to critical facilities and the vehicles of local, state, and federal first responders all require fuel. After Katrina, fuel was in great demand, and getting the supplies into the region by tanker truck was extremely difficult because the few roads that were open were congested with vehicle traffic.

Waterborne fuel delivery is the most efficient means of shipping large volumes of fuel. According to the U.S. Maritime Administration, the cargo capacity of a 1500-ton standard inland barge is 15 times greater than one rail car and 60 times greater than one semi-trailer. In simpler terms, a 1500-ton fuel barge has a cargo capacity of 453,600 gallons compared to 30,240 for a rail car and 7560 for a tanker truck.

NOAA estimates that almost 160 million people – 53 percent of the total U.S. population – live in 673 coastal counties. Common sense dictates that our nation must have the capability to provide large amounts of fuel

quickly to areas that are impacted by catastrophic events. Accordingly, Congress should enact legislation directing the Coast Guard to develop a system to take on this mission.
